

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

WP(C).No. 9852 of 2007(W)

PETITIONER:

**M/S. CONTOUR READYMIX PVT. LTD.,
VENNALA P.O., KOCHI-28
REPRESENTED BY ITS MANAGING DIRECTOR
SRI. SONY C.MADATHIL.**

BY ADV. SRI.A.KUMAR

RESPONDENTS:

- 1. THE DEPUTY COMMISSIONER(APPEALS)-II,
ERNAKULAM.**
- 2. THE ASSISTANT COMMISSIONER,
KVAT SPL CIRCLE-III, ERNAKULAM.**
- 3. THE INTELLIGENCE OFFICER,
SQUAD NO.1, ERNAKULAM.**
- 4. THE INSPECTING ASSISTANT COMMISSIONER,
KAKKANAD.**

BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9852 of 2007-W

Dated this the 26th day of March, 2007

JUDGMENT

The petitioner challenges Ext.P9 interim order disposing of a stay application filed by it along with Ext.P7 appeal, challenging Ext.P4 penalty order. The petitioner submits, the assessment for the year is not yet over. According to it, if the grounds taken in Ext.P5 rectification application is accepted, the tax liability will come down by Rs.50 lakhs which will correspondingly reduce the penalty also. It is also pointed out that some of the assessing authorities have treated supply of ready mix concrete as works contract and assessed accordingly. The petitioner has also a contention that the principles laid down by this Court in Jyothi Laboratories case may not be applicable after the enforcement of the Kerala Value Added Tax Act.

2. I heard the learned Government Pleader for the respondents also.

3. Having regard to the fact that the tax for the year is not yet finalised, it is ordered that, if the petitioner pays one-fourth of the penalty amount, further recovery pursuant to Ext.P4 shall be kept in abeyance, provided the petitioner furnishes security for the balance amount within one month from today. If ultimately, the penalty is set aside, the amount paid can be adjusted towards tax liability. If the amount of 25% is paid before 31-3-2007, it shall be treated that the amount is paid, within time.

The Writ Petition is disposed of as above.

MS

K.BALAKRISHNAN NAIR, JUDGE.